

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
<b>Ray R. Silva</b>	)	Facility ID No. 55244
	)	NAL/Acct. No. MB-200741410145
Licensee of Station KMXO(AM)	)	FRN: 0005077110
Merkel, Texas	)	File No. BR-20050531BPU

**FORFEITURE ORDER**

**Adopted: October 19, 2010**

**Released: October 20, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of one thousand, five hundred dollars (\$1,500) to Ray R. Silva (“Licensee”), licensee of Station KMXO(AM), Merkel, Texas (“Station”) for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”), by failing to timely file a license renewal application for the Station.<sup>1</sup>

**II. BACKGROUND**

2. On January 31, 2007, the Bureau adopted a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of one thousand, five hundred dollars (\$1,500) to Licensee for this violation.<sup>2</sup> As noted in the *NAL*, Licensee’s renewal application for the Station’s license term was due on April 1, 2005, four months prior to the August 1, 2005, expiration date.<sup>3</sup> Licensee did not file the application until May 31, 2005, and provided no explanation for its untimely filing. Licensee submitted a response (“Response”) to the *NAL* on April 2, 2007.

3. In the Response, Licensee asserts that the proposed forfeiture should be cancelled because: (1) his failure to timely file the license renewal application was not willful; and (2) paying the forfeiture would present a financial hardship.

**III. DISCUSSION**

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications of Act of 1934, as amended (“Act”),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and the

<sup>1</sup> 47 C.F.R. § 73.3539.

<sup>2</sup> *Ray R. Silva*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2097 (MB 2007). The Commission granted the license renewal application on January 31, 2007.

<sup>3</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

Commission's *Forfeiture Policy Statement*.<sup>6</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>7</sup>

5. Licensee does not dispute that he failed to file a timely renewal application for the Station, but explains that this violation was unintentional. His Response states that he was unaware that the Station's renewal application was due four months prior to the license expiration.<sup>8</sup> Licensee further explains that his failure to timely the renewal application was not "willing" because he was, at the time, financially unable to pay the \$150 filing fee.<sup>9</sup>

6. As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.<sup>10</sup> Therefore, Licensee's unfamiliarity with the Commission's license renewal application filing deadline does not excuse its failure to timely file the license renewal application.<sup>11</sup> We further reject Licensee's unsupported argument that its failure to timely file was not willful because it could not afford to pay the filing fee. A licensee is "ultimately responsible for ensuring it complied with the Commission's Rules by filing a timely renewal application."<sup>12</sup> This includes paying the required license renewal application fee.<sup>13</sup> We thus find that Licensee's failure to timely file the application was not excused by its supposed financial difficulties.<sup>14</sup>

7. Licensee next argues that the payment of the forfeiture amount would present a financial hardship. The Commission will not consider reducing or cancelling a forfeiture in response to inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial

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<sup>6</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> Response at 1.

<sup>9</sup> *Id.*

<sup>10</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

<sup>11</sup> *Friends of Christian Radio*, Forfeiture Order, 25 FCC Rcd 2580, 2581 (MB 2010); *Tennessee Technological University*, Forfeiture Order, 25 FCC Rcd 2351, 2352 (MB 2010).

<sup>12</sup> See, e.g., *Educational Media Foundation*, Letter, 23 FCC Rcd 15366 (MB 2008) (citing *Request for Waiver by Center City School*, Order, 17 FCC Rcd 22424, 22426 (WCB 2002) ("it is the applicant who has responsibility ultimately for the timely submission of its application.")).

<sup>13</sup> See 47 C.F.R. § 1.1104. The Commission accepts requests for waivers of filing fees. See 47 C.F.R. § 1.1119. Licensee thus could have timely filed his application and sought a waiver of the filing fee but did not.

<sup>14</sup> See *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099 (1994) (finding that petitioner's failure to pay an application filing fee because of financial difficulties was a willful violation).

documentation submitted.<sup>15</sup> In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.<sup>16</sup> If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.<sup>17</sup>

8. Here, Licensee has provided us with federal tax returns for the years 2002, 2003, and 2004. These returns show gross revenues of \$32,628, \$39,093, and \$35,500, respectively. The \$1,500 assessed forfeiture represents less than four percent of the average revenue for these years. In considering claims of financial hardship, we have previously found forfeiture amounts as high as 4 percent of gross revenues to be reasonable,<sup>18</sup> and the Enforcement Bureau has found that a forfeiture as high as 7.9 percent of the violator's gross revenue was not excessive despite claims of financial hardship.<sup>19</sup> We are unwilling to cancel or reduce the forfeiture in this case because the forfeiture represents such a small percentage of Licensee's gross revenue.

9. We have considered Licensee's Response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>20</sup> violated Section 73.3539 of the Rules and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>21</sup> that Ray R. Silva SHALL FORFEIT to the United States the sum of one thousand, five hundred dollars (\$1,500) for willfully violating Section 73.3539 of the Commission's Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>22</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL,

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<sup>15</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

<sup>16</sup> *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

<sup>17</sup> *Id.*

<sup>18</sup> See *Bowie County Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 9539 (2009).

<sup>19</sup> See *Coleman Enterprises, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389 (EB 2000), *recon. denied*, 16 FCC Rcd 10023, 10025 (2001).

<sup>20</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

<sup>21</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>22</sup> 47 U.S.C. § 504(a).

1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).<sup>23</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Alexander.Sanjenis@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>24</sup>

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Mr. Ray Silva, 604 N 2<sup>nd</sup> St, Merkel, TX 79536, and to his representative, Mr. Zacarias Serrato, KMXO Radio, P.O. Box 523, Merkel, TX 79536.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>23</sup> See 47 C.F.R. § 1.1914.

<sup>24</sup> *Id.*